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OFFICE OF PETITIONS

In re Patent No. 6,780,628
Anderson et al.
Issue Date: August 24, 2004
Application No. 09/731,971
Filed: December 8, 2000
Attorney Docket No. 016754/0206

: DECISION ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT
: and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

:

This is a decision on the "PETITION TO CORRECT PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR §1.705" filed October 22, 2004. Patentees request that the patent term adjustment indicated in the patent be corrected from fifty-eight (58) to one hundred seventy (170) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED** to the extent indicated herein.

Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136.

The patent term adjustment indicated in the patent is to be corrected by issuance of a Certificate of Correction showing a Patent Term Adjustment of seventy-eight (**78**) days.

On August 24, 2004, the above-identified application matured into U.S. Patent No. 6,780,628. The instant request for reconsideration filed October 22, 2004 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 58 days. Patentees state that the initial determination of patent term adjustment of 170 days should not have been reduced by 112 days for the submission of a "Miscellaneous Incoming Paper" after the Notice of Allowance, as the paper was a Comments on Statement of Reasons for Allowance.

Patentees' argument is well-taken. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing after the mailing of a Notice of Allowance of a response to the examiner's reasons for allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10) *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001). A review of the application record confirms that the reduction of 112 days was based on the filing after allowance of a Comments on Statement of Reasons for Allowance filed May 5, 2004. Thus, it is concluded that the patent term adjustment should not have been reduced by 112 days.

However, a review of the application history reveals that entry of a period of adjustment of 92 days for Office delay in taking action in response to the filing of the notice of appeal is incorrect. The filing of a notice of appeal is not an action which triggers entry of a period of adjustment for Office delay in responding. Moreover, the Notice of Allowance mailed February 11, 2004 was mailed in response to and within four months of applicants' filing on January 9, 2004 of an argument after notice of appeal.

In view thereof, the patent term adjustment indicated in the patent should be **seventy-eight (78) days**.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **SEVENTY-EIGHT (78) days**.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

*Karin Ferriter
for*

Karin Ferriter
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Office of Patent Legal Administration
Office of Deputy Commissioner
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Enclosure: Copy of DRAFT Certificate of Correction